IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Shiv Prakash Bhatt Vs. State and ors.

S.B. CRIMINAL REVISION PETITION NO.534/1995
under Section 397/401 Cr.P.C.

Date of Order :- **October 4, 2006.**

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Suresh Goyal for the petitioner.
Mr. Arun Sharma P.P. for the State.
Mr. S.P. Singh for non-petitioners No.2 to 7.

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BY THE COURT :-

The instant revision petition under Section 397/401 Cr.P.C. seeks quashing of the order dated 30/11/1995 of the learned Special Judge, Dacoity Affected Area-cum-Additional Sessions Judge, Karauli in Sessions Case No.95/1995 whereby the accused non-petitioners No.2 to 7 have been discharged of the offence under Section 367 I.P.C. but charges have been framed against them for offences under Sections 147, 323, 325 and 365 I.P.C.

The relevant facts giving rise to this petition and necessary for its disposal are that one Goopal Lal lodged a report at P.S. Karauli on the basis of which F.I.R. No.28/1995 came to be registered on 17/1/1995. It was alleged that petitioner was on hunger strike regarding the enquiry of corruption against Shri Nawal Kishore Sharma, the then Munsif Magistrate. Non-petitioners No.2 to 7 came there in Jeep and Ambassador Car and gave beating to him, as a result of which, he sustained 15 injuries by blunt object including fractures.

After investigation, charge-sheet was filed for offences under Sections 147, 149, 323, 325, 365 and 367 I.P.C. The case was committed to the learned court below for trial and the learned court below passed the order as indicated above.

I have heard learned counsel for the parties as well as learned Public Prosecutor for the State and have perused the record.

It is contended that the learned court below has committed grave illegality which tantamoutns to abuse of the process of the court in discharging the accused-non-petitioners No.2 to 7 of charge under Section 367 I.P.C. especially when the charges for offences under Sections 147, 323, 325 and 365 I.P.C. have been framed against them. The impugned-order is obviously self contradictory and untenable.

Learned Public Prosecutor as well as learned counsel for the accused-non-petitioners could not justify passing of the impugned-order which appears to be self contradictory.

In this behalf, Section 367 I.P.C. is reproduced here-in-below:-

> **"367.Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.-**Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The court below has found prima-facie that offences under Sections 147, 323, 325 and 365 I.P.C. are made out but still has discharged the accused-non-petitioners No.2 to 7 of the offence under Section 367 I.P.C. which order in my well considered view is un-sustainable in law being self contradictory and against the materials on record.

Consequently, this revision petition is allowed and the order dated 30/11/1995 is quashed and set-aside. The matter is remitted back to the learned Special Judge, Dacoity Affected Area-cum-Additional Sessions Judge, Karauli with the direction to pass fresh order regarding charges as per law keeping in view the observations made here-in-above. The record of the case be also sent back to the aforesaid court forthwith.

(HARBANS LAL), J.

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